



WISCONSIN REGULATORY DIGEST

A Publication of the PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

Volume 5, No. 2

DECEMBER, 2000

New Physical Therapy Rule

1. I understand that new or revised rules were recently adopted related to PT assistants and PT aides. When did the rules take affect and what do the statutes and administrative rules now say?

The PTACB approved the new rules for enactment at PTACB's regular board meeting on February 29, 2000. The rules became effective May 1st.

The new rules define a "physical therapy" aide as a person other than a physical therapist or physical therapist assistant who provides patient care activities consistent with the aide's education, training and experience. A physical

therapy aide provides care only under the direct on-premises supervision of a physical therapist.

The new rules also further describe the supervision requirements for the physical therapist who is supervising physical therapist assistants and physical therapy aides. These requirements are listed in PT 5.02.

Chapter PT 5 PHYSICAL THERAPIST ASSISTANTS

PT 5.01 Physical therapist assistants. A physical therapist assistant, as defined in s. 448.52 (3), Stats., may practice physical therapy under the general supervision of a physical therapist. In providing general supervision, the physical therapist shall do all of the following:

- (1) Have primary responsibility for physical therapy care rendered by the physical therapist assistant.
- (2) Have direct face-to-face contact with the physical therapist assistant at least every 14 calendar days.
- (3) Remain accessible to telecommunications in the interim between direct contacts while the physical therapist assistant is providing patient care.
- (4) Limit the number of physical therapist assistants supervised to a number appropriate to

THE WISCONSIN PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD

Members of the Board:

Nelda Olson, P.T. (Black River Falls) - Chair
Shirley Mook, Vice-Chair (Marshfield)
Barbara Flaherty, P.T., Secretary (Oshkosh)
Michael W. Edwards, P.T. (Waukesha)

Administrative Staff:

Patrick D. Braatz, Division Administrator

Executive Staff:

Marlene A. Cummings, Secretary
William J. Conway, Deputy Secretary
Myra Shelton, Executive Assistant

Contents

New Physical Therapy Rule	1
Board Member Roster	1
Whistleblowers Protection Law	2
1999 WI Act 176	3
Board Meetings	5
Telephone Directory & Miscellaneous	6

the setting in which physical therapy is administered, to ensure that all patients under the care of the physical therapist receive services that are consistent with accepted standards of care and consistent with all other requirements under this chapter. No physical therapist may supervise more than 2 physical therapist assistants full-time equivalents at any time.

(5) Establish a written policy and procedure for written and oral communication. This policy and procedure shall include a specific description of the supervisory activities undertaken for the physical therapist assistant, appropriate to the setting and the services provided.

(6) Provide initial patient evaluation and interpretation of referrals.

(7) Develop and revise as appropriate the patient treatment plan and program.

(8) Delegate appropriate portions of the treatment plan and program to the physical therapist assistant consistent with the physical therapist assistant's education, training and experience.

(9) Provide on-site assessment and reevaluation of each patient's treatment a minimum of one time per calendar month or every tenth treatment day, whichever is sooner, and adjust the treatment plan as appropriate.

History: Cr. Register, September, 1995, No. 477, eff. 10-1-95.

PT5.02 Direct supervision of physical therapist assistants and physical therapy aides. Physical therapist assistants may provide physical therapy services, and physical therapy aides may provide patient care activities under the direct on-premises supervision of a physical therapist. In providing direct supervision, the physical therapist shall do all of the following:

(1) Have primary responsibility for patient care rendered by the physical therapist assistant or physical therapy aide.

(2) Be available at all times for consultation with the physical therapist assistant or physical therapy aide.

(3) Observe and monitor those under direct supervision on a daily basis.

(4) Evaluate the effectiveness of services provided by those under direct supervision on a daily basis by observing and monitoring persons receiving such services.

(5) Determine the competence of each physical therapist assistant and physical therapy

aide based upon his or her education, training and experience.

(6) Interpret referrals and perform initial patient evaluation and examination.

(7) Provide interpretation of objective tests, measurements and other data in developing and revising a physical therapy diagnosis, assessment, and treatment plan.

(8) Delegate appropriate portions of the treatment plan and program to the physical therapist assistant or physical therapy aide consistent with the education, training, and experience of the person supervised.

(9) Limit the number of physical therapist assistants and physical therapy aides providing patient care under direct supervision to a number appropriate to the setting in which physical therapy is administered., to ensure that all patients under the care of the physical therapist receive services that are consistent with accepted standards of care and consistent with all other requirements under this chapter. The total number of physical therapist assistants and physical therapy aides providing patient care under direct and general supervision may not exceed a total of 4.

Law Will Protect Whistleblowers Against Retaliation

The state will protect health care industry whistleblowers from retaliation by their employers under legislation signed by Gov. Tommy Thompson.

The law also allows health care workers who believe they were disciplined for reporting possible violations to file discrimination complaints with the state.

Thompson said, "although Wisconsin is already at the forefront of health care, the law will further improve patient care by giving workers the protection they need to speak out when they see problems."

"This bill strengthens the laws already in place to protect health care users, and it does so with minimal cost," Thompson said.

Employers found to have unfairly disciplined doctors, nurses, pharmacists, social workers and other health care workers face up to \$10,000 in civil fines under the new law.

It also gives health care workers the same right to file discrimination complaints as state employees

who feel their supervisors have retaliated against them.

Under 1999 WI Act 176, retaliation includes being fired or switched to a different shift, reprimanded or threatened.

Gina Dennik-Champion, a spokeswoman for the Wisconsin Nurses Association, said the law also requires health care providers to post information on whistleblower protections and include it in their orientation for new workers.

“A lot of times, they use the chain of command and they keep telling them ‘We’ll fix it, we’ll fix it’ and it doesn’t get fixed,” Dennik-Champion said. “It just kind of goes nowhere. The concern still exists.”

Scott Peterson, spokesman for the Wisconsin Health and Hospital Association, said the health care industry sees the law as another step to improve patient care.

“We’re not going to achieve the high levels of quality that the public is demanding without the help of our employees,” Peterson said.

1999 WISCONSIN ACT 176

AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.06 (6), 146.997 and 230.45 (1) (L) of the statutes; **relating to:** disciplinary action against an employee of a health care facility or a health care provider who reports a violation of the law or a violation of a clinical or ethical standard by the health care facility or health care provider or by an employee of the health care facility or health care provider and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 106.06 (6) of the statutes is created to read:

106.06 (6) The division shall receive complaints under s. 146.997 (4) (a) of disciplinary action taken in violation of s. 146.997 (3) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or

146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 3. 111.322 (2m) (b) of the statutes is amended to read: 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 4. 146.997 of the statutes is created to read:

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) “Department” means the department of workforce development.

(b) “Disciplinary action” has the meaning given in s. 230.80 (2).

(c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex, tuberculosis sanatorium or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist or physical therapist licensed under ch. 448.
5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.
12. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.

15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50

19. A rural medical center, as defined in s. 50.50 (11).

20. A home health agency, as defined in s. 50.49 (1)(a).

(2) REPORTING PROTECTED. (a) Any employe of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employe of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employe of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employe of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par. (a) shall, within 5 days after receiving the report,

notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard-setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employe of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employe of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employe of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employe believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2)(d).

(b) No health care facility or health care provider and no employe of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2)(c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employe believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employee is not acting in good faith if the employee reports any information under sub. (2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2)(c) based on information that the employee knows or should know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par. (b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.06 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32(6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the personnel commission under s. 230.45(1) (L). If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates

this subsection shall forfeit not more than \$100 for each offense.

SECTION 5. 230.45 (1) (L) of the statutes is created to read: 230.45 **(1) (L)** Receive complaints under s. 146.997(4) (a) of disciplinary action taken in violation of s. 146.997 (3) and, except as provided in sub. (1m), process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 6. Nonstatutory provisions.

(1) EMPLOYEE NOTIFICATION. Within 90 days after the effective date of this subsection, each health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, and each health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, shall inform its employees of their rights and remedies under this act.

SECTION 7. Initial applicability.

(1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee of a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

Department of Regulation and Licensing
Physical Therapists Affiliated
Credentialing Board
P.O. Box 8935
Madison, WI 53708-8935

REGULATORY DIGEST

PRSRT STD
U.S. Postage
Paid
Madison, WI
Permit No. 1369

RETURN SERVICE REQUESTED

Telephone Directory

Automated Phone System for the Health
Professions: (608) 266-2811

Press 1 Request Application
Press 2 Status of a Pending Application
Press 3 Complaint Filing Information
Press 4 Verifying Current Status of a
Credential Holder
Press 5 Name or Address Change
Need a Duplicate License
Request a Letter of Good Standing
Press 6 Repeat Menu Choices

Fax Number

(608) 261-7083

Verifications

All requests for verification of license status must be in writing. There is no charge for this service. For our new "online Verification of Credential Holders" visit our Website at www.drl.state.wi.us and click on the "Credential Holder Query" button.

Endorsements

Requests for endorsements to other states must be in writing. The cost is \$10. Please make check or money order payable to the Department of Regulation and Licensing.

Digest on Web Site

December 1997, August 1998, June 1999

Visit the Department's Web Site

<http://www.drl.state.wi.us/>

Send comments to dorl@dril.state.wi.us

Wisconsin Statutes and Code

Copies of the Physical Therapists Affiliated Credentialing Board Statutes and Administrative Code can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated October, 2000.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

Subscription Service

Bi-annual digest subscriptions are published for all credentials in the Department at a cost of \$2.11 each per year. **CREDENTIAL HOLDERS RECEIVE THEIR REGULATORY DIGEST FREE OF CHARGE.** Others may send the fee and this form to the address listed above.

Subscription Service Order Form

Name

Company/Organization

Street Address/P.O. Box

City/State/Zip + 4

County

Digest(s) desired:

\\WIS_DRL_01\DATA2GB\GROUPS\WORDPROC\DIGEST\PT1200.doc